

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JUNNE KYOO KOH,

Plaintiff,

V.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. C16-0291JLR

ORDER ADOPTING REPORT AND RECOMMENDATION

On March 8, 2016, Petitioner Junne Kyoo Koh filed a 42 U.S.C. § 2241 petition

for writ of habeas corpus challenging his pretrial detention in his ongoing criminal case.

(See Petition (Dkt. # 3).) At that time, Mr. Koh was a pre-sentencing detainee at the

Federal Detention Center – Sea Tac near Seattle, Washington. He was subsequently

found guilty of Felon in Possession of a Firearm, Alien in Possession of a Firearm and

Illegal Reentry After Deportation. *See United States of America v. Junne Kyoo Koh*, N.Y.

2:15-CR-98 RSM (W.D. Wash.) (Dkt. # 88). On March 17, 2016, Chief Judge Ricardo

1 Martinez sentenced Mr. Koh to 60 months. *Id.* (Dkt. ## 87, 88). Counsel for Mr. Koh
2 filed a Notice of Criminal Appeal that same day. *Id.* (Dkt. # 89).

3 On March 17, 2016 United States Magistrate Judge Brian A. Tsuchida filed a
4 Report and Recommendation recommending dismissal of Mr. Koh's 42 U.S.C. § 2241
5 petition for habeas corpus without prejudice. (R&R (Dkt. # 4).) The Report and
6 Recommendation explains that a federal prisoner challenging the validity or
7 constitutionality of a conviction must bring a petition for writ of habeas corpus under 28
8 U.S.C. § 2255, while a petitioner challenging the manner, location or conditions of the
9 execution of a sentence is required to bring a petition for writ of habeas corpus under 28
10 U.S.C. § 2241. *Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir. 2000). Petitioner
11 filed an Objection to Magistrate Report and Recommendation. (Obj. (Dkt. # 5).)

12 The court agrees with Magistrate Judge Tsuchida that Mr. Koh's Petition for writ
13 of habeas corpus under 28 U.S.C. § 2241 is not proper. To the extent Mr. Koh is
14 challenging his pretrial detention order, the issue is now moot as he has been sentenced in
15 his criminal case. To the extent he sought review of his conviction, his petition is
16 premature and should be brought under 28 U.S.C. § 2255. Mr. Koh is not challenging the
17 manner, location or conditions of the execution of a sentence and any challenge to
18 legality of his sentence must be brought under 28 U.S.C. § 2255. The Report and

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1 Recommendation is correct and is ADOPTED. An Order of Dismissal and Judgment will
2 be entered by separate pleading.

3 Dated this 5th day of April, 2016.

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7 JAMES L. ROBART
8 United States District Judge
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